IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST

Not Restricted

S ECI 2020 03043

JULIAN TAYLOR — Plaintiff

v

VICTORIAN INSTITUTE OF TEACHING — Defendant

JUDGE:	Ginnane J
WHERE HELD:	Melbourne
DATE OF HEARING:	28 September 2021
DATE OF JUDGMENT:	14 April 2022
CASE MAY BE CITED AS:	Taylor v Victorian Institute of Teaching (No 1 – The Judicial Review Proceeding)
MEDIUM NEUTRAL CITATION:	[2022] VSC 184

JUDICIAL REVIEW – Decision of Victorian Institute of Teaching Panel – Teacher registration – Misrepresentations by teacher in registration applications – Deregistration of teacher – Judicial review application four and a half years out of time – Whether time should be extended – Whether Panel denied teacher natural justice – Application for extension of time refused – Proceeding dismissed.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	In person	
For the Defendant	M Isobel	Solicitor for the Victorian Institute of Teaching

HIS HONOUR:

1 Mr Julian Taylor, the plaintiff, seeks judicial review remedies including that the Court order the defendant, the Victorian Institute of Teaching ('VIT' or 'the Institute') to set aside and declare void its hearing of 12 August 2015 and its decision and 30 August 2015 to cancel his registration as a teacher.

2 Mr Taylor commenced this proceeding on 14 July 2020 which was 4 years and 8 months beyond the time of 60 days in which he could commence judicial review proceedings. The Court may extend that time period where special circumstances exist.[1] This judgment considers Mr Taylor's application for an extension of time.

3 Mr Taylor was provisionally registered as a teacher with the Institute on 25 January 2006 and was granted full registration on 12 January 2012. All school teachers in Victoria must be registered with the Institute. Mr Taylor taught in schools in Victoria and elsewhere.

4 In June 2015, the Institute was notified of concerns about the identity of a teacher registered in Victoria, Mr Julian Taylor. The Institute investigated to determine if Mr Taylor had obtained his registration by fraud or misrepresentation. That matter was referred to a formal hearing before a hearing panel under Part 2.6 Division 12 Subdivision 4 of the *Education and Training Reform Act 2006* (the 'ETR Act'). Under s 2.6.46(2), if after considering the submissions made at a formal hearing, the Panel finds that the registration of the teacher has been obtained by fraud or misrepresentation or concealment of facts, the Panel has a range of options. It may impose conditions, limitations or restrictions on the teacher's registration, caution or reprimand the teacher, refer the matter to a medical panel, suspend the teacher's registration, cancel the teacher's registration and in the latter event, disqualify the teacher from applying for registration for a specified period. The hearing panel is bound by the rules of natural justice.[2]

5 A notice of formal hearing dated 23 July 2015 was sent to Mr Taylor by express post on 30 July 2015. The Institute's allegations were that:

1 *Supreme Court (General Civil Procedure) Rules 2015* O 56.02(3).
2 ETR Act s 2.6.48(d).

1. Between about 1 November 2005 and 30 June 2006, at Melbourne, Victoria and elsewhere, Julian Richard TAYLOR [name as registered] also known as Julian Steven TAYLOR fraudulently and by false representation obtained registration to teach, by:

    a. completing your 2005 application in a false name;

    b. failing to disclose your previous names;

    c. failing to disclose your findings of guilt and convictions for indictable offences in Victoria and elsewhere; and

    d. providing a false identity document in support of your application; and

2. Between about 1 July 2007 and 23 July 2015, at Melbourne, Victoria and elsewhere, Julian Richard TAYLOR [name as registered] also known as Julian Steven TAYLOR fraudulently and by false representation obtained registration to teach by:

    a. Completing your applications in a false name;

    b. Failing to disclose your previous names;

    c. Failing to disclose your findings of guilt and convictions for indictable offences in Victoria and elsewhere; and

    d. Providing a false identity document in support of your applications.

The Panel's determination

6 On 31 August 2015 a Panel of the Institute ('the Panel') found and determined that:

> Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 August 2015 the Panel found that Mr Taylor had obtained his registration by misrepresentation.
>
> The Panel determined to cancel Mr Taylor's registration from 31 August 2015.

7 The Panel stated:

> The Panel is persuaded on the balance of probabilities that the evidence clearly demonstrates that the person known to the Institute as Julian Richard Taylor is the same person as Steven Robert Barr. The evidence trail and connections of birth certificates, marriage certificates, character references from spouse, deed of name change forms, citizenship certificates, passports, border control documents, criminal records, photographs and job resumes, provide explicit and convincing proof to the Panel that they are one and the same person. With this finding the Panel therefore links Mr Taylor to the other known aliases and the relevant findings in respect of criminal offences as set out in the evidence.
>
> The evidence is compelling that the person known to the Institute as Julian Richard Taylor did:

- Complete an application in a false name;
- Failed to disclose his previous names;
- Failed to disclose his findings of guilt and convictions for offences, including indictable, in Victoria and elsewhere; and
- Provided a false identity document in support of his application(s)

8 The Panel found that Mr Taylor's three applications for registration as a teacher in 2005, 2008 and 2012 were established by misrepresentation. It stated:

> The birth certificate document provided and representations made in support of the registration as well as the declarations attesting to the truth of the material particulars in support of the registration were false. The consequence of that misrepresentation was to prevent the Institute from exercising its statutory powers and did not allow the Institute to assess Julian Richard Taylor's suitable to teach.

9 The Panel also stated:

> Although the Panel have not had the opportunity of hearing from Mr Taylor, the panel are unable to find a benign explanation for the misrepresentations. The panel therefore considers it to be a reasonable inference that Mr Taylor possesses serious character flaws suggesting that he should not be placed in a position of authority or trust.
>
> Furthermore such actions have the potential to bring the profession itself in disrepute because they clearly transgress the ethical and professional behaviour expected of a teacher as codified in the Victorian Teaching Profession Codes of Ethics and Conduct.
>
> Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 August 2015 the Panel found that Mr Taylor had obtained his registration by misrepresentation.

10 A police investigation followed the Panel's determination. Mr Taylor was arrested on 25 November 2015. He was granted bail on 13 September 2017 after a number of attempts and 11 months later on 14 August 2018, three years after the Panel's determination, he was found guilty in the County Court of:

(a) Four charges of using a false document contrary to section 83A(4) of the *Crimes Act 1958*;

(b) One charge of perjury contrary to section 314(1) of the *Crimes Act 1958*;

(c) Seven charges of obtaining a financial advantage by deception contrary to

section 82(1) of the *Crimes Act 1958*; and

(d) One charge of making, using or supplying identification information contrary to section 192B(1) of the *Crimes Act 1958*.

11 Mr Taylor was sentenced to two years and 11 months imprisonment with a non-parole period of two years and two months. His application to the Court of Appeal for leave to appeal the conviction and sentence was dismissed.[3]

12 Mr Taylor considered that the deregistration was the key to his conviction, because without it he would not have been charged or convicted. His visa was cancelled because of his convictions and sentence, and since completing his sentence he has been held in immigration detention because of that cancellation. He is a British citizen.

13 After Mr Taylor commenced this proceeding, the VIT applied to have it dismissed, arguing that it was an abuse of process because he had previously commenced a proceeding in the Victorian Civil and Administrative Tribunal for which he was seeking an extension of time to review the VIT's decision. I dismissed the VIT's application because at that point it was uncertain that both proceedings would continue.[4]

14 In deciding whether to grant an extension of time to commence a proceeding, the Court exercises a discretion. Relevant to the exercise of that discretion are the extent of the delay and the explanation for it; whether there is any utility in granting the extension; the prospects of the plaintiff succeeding; any prejudice to the other party if the extension of time is granted and the overall justice of the case.[5]

15 I will next consider these matters as they apply to Mr Taylor's application for an extension of time.

3 *Taylor v The Queen* [2019] VSCA 162.
4 *Taylor v Victorian Institute of Teaching* [2020] VSC 780.
5 *Hughes v National Trustees, Executors & Agency Co of Australasia Ltd* [1978] VR 257, 263; *Jackamarra v Krakouer* (1998) 195 CLR 516; *Gajic v Harb* [2011] VSCA 132.

Mr Taylor's delay

16 I accept that Mr Taylor did not receive the Institute's decision until 26 October 2015.

17 Mr Taylor commenced this proceeding on 14 July 2020, which was some four years and eight months after the Panel's determination. As he had 60 days to commence this judicial review proceeding, he was four years and six months out of time in doing so. As mentioned, the Court can extend that time in special circumstances.[6]

18 Therefore, Mr Taylor needs to persuade the Court that it is an appropriate exercise of discretion to grant the very lengthy extension of time which he seeks.

Mr Taylor's explanation for his delay

19 By way of explanation for his delay, Mr Taylor pointed to the time that he spent in prison awaiting trial and the difficulties faced by prisoners on remand. Although he was on bail for 11 months, he says that he was under strict bail conditions, he was fighting the Immigration Department to stay in Australia and he had to deal with custody issues concerning his daughter.

20 The VIT opposed Mr Taylor's application for an extension of time. It submitted that he had not demonstrated an acceptable explanation for the delay and he did not continue to make it aware that he contested the finality of the Panel's decision. The VIT argued that Mr Taylor had three months before arrest and 11 months on bail to make his application.

21 I am not persuaded that Mr Taylor could not have commenced this proceeding at least during the 11 months while he was on bail. Making due allowance for his strict bail conditions, and the other challenges he faced, he had an extensive period of time in which to commence the proceeding. I am not persuaded that he has provided an adequate explanation for his delay.

Mr Taylor's prospects of success

22 An extension of time to commence a proceeding will usually not be granted unless the applicant establishes that he has reasonable prospects of success in his proceeding.

6 *Supreme Court (General Civil Procedure) Rules 2015* O 56.02(3).

Therefore, in this case, Mr Taylor would have to establish that the Panel made a reasonably arguable jurisdictional error.

23 Jurisdictional error occurs where a decision-maker does something which it lacks authority to do, identifies a wrong issue, asks itself a wrong question, ignores relevant material or relies on irrelevant material, makes erroneous findings, or acts unreasonably.[7]

24 Mr Taylor relied on 23 points of law to support his claim for judicial review remedies. He also relied on many affidavits. A number of his points of law allege that he was denied natural justice,[8] which the Panel was obliged to afford him.[9] He alleged that the Panel refused his legitimate and reasonable request for an adjournment at the Panel hearing and conducted it in his absence; that he was unable to present his case to prove his 'fitness to teach' to the Panel or present his qualifications; and that it discriminated against him because of his disability as an asthmatic and breached his rights given by the *United Nations Universal Declaration of Human Rights a*nd breached provisions of the *Equal Opportunity Act 2010*.

25 To consider the proposed grounds concerning the Panel's refusal to grant Mr Taylor an adjournment, it is necessary to set out the chronology of the events leading to the Panel hearing. As mentioned, Mr Taylor was sent notice of the hearing on 30 July 2015. On Saturday 8 August 2015, he emailed Mr S Williams at the VIT requesting a six week adjournment of the formal hearing due to the fact that his 'preparation for this matter has been severely compromised due to illness'.

26 On Monday 10 August 2015, Mr Williams replied by email informing Mr Taylor that the adjournment request had been forwarded to the Panel members for their consideration. He also advised Mr Taylor that it had not been possible to contact the Chair of the Panel, and that it was likely the Panel would require him to appear to make the formal application for an adjournment and provide them with evidence,

7 See generally *Craig v South Australia* (1995) 184 CLR 163, 179.
8 Originating Motion for Judicial Review dated 25 June 2020, Grounds ('Grounds'), Points of Law 1-3 and 13-15.
9 ETR Act, s 2.6.48.

such as a medical certificate, to support the application for an adjournment.

27 On the same day Mr Taylor emailed Mr Williams stating:

> This now (and I accept it is largely my fault) puts me in a difficult position.
>
> My engineering position is relatively new and I don't want to start taking days off without notice. To take Wednesday off for this hearing is very embarrassing and awkward for me to do.
>
> This is further compounded by the fact that I have already arranged to have Friday off so that I may travel the necessary 6 hours to see my daughter.
>
> I honestly I don't know how I will be able to attend Wednesday.

28 On 11 August 2015, Ms M Saba of VIT emailed Mr Taylor enclosing an email from Mr G Coates, Manager, Governance stating that:

> The panel have considered this request and advised me that in view of the lateness of the request and the lack of any supporting material, they do not propose adjourning the matter today. Mr Taylor should be advised that the matter will proceed tomorrow as previously advised. The panel have indicated that they are prepared to consider any application Mr Taylor might care to make in person tomorrow, including an application for adjournment. Appropriate supporting material should be supplied with any such application. With regard to the employment issue raised by Mr Taylor. He should be advised that I can provide written confirmation of the necessity for his attendance if he desires.

29 On 12 August 2015, Mr Taylor replied by email, stating his intention to appeal the decision to refuse him an adjournment.

30 On the same day, the formal hearing proceeded, but Mr Taylor did not attend.

31 On 13 August 2015, Mr Coates wrote to Mr Taylor enclosing the extensive written submissions that the Institute's counsel made to the Panel. It advised him that because he did not attend the hearing, it had decided to defer making any decision for seven days to allow him the opportunity to respond in writing to the submissions made by the Institute's counsel. The Panel invited Mr Taylor to make written submissions to the Panel before the close of business on 21 August 2015. He did not do so, but on 17 August and 19 August 2015 he emailed Mr Williams requesting an extension of time. In the former, he said that over the last month he had developed a chest infection, which had worsened considerably. He was suffering from asthma

and not sleeping properly. He had started a new job and could not take time off. In his email of 19 August 2015, Mr Taylor explained that he did not have a medical certificate because 'the doctor who saw me did it as an extra and doesn't want any more patients. I hence can't get in to see him again.' He attached a statutory declaration as proof of his asthma and illness. In the statutory declaration he stated that he was a severe asthmatic and had severe asthma for the latter part of July through to August 2015, which was so bad that he was unable to perform his normal duties and he spent several days incapacitated by the condition. He stated that he was still unwell but had recovered to about 90% of his prior health status.

32 On 21 August 2015, Mr Coates informed Mr Taylor by email that the Panel, having received his statutory declaration, considered there to be insufficient basis for extending time to respond and urging him to make use of the remaining period left open to him to prepare a response to the material provided by the Institute. Mr Taylor responded asking 'how do they expect me to do that when I am unwell?' and stating his intention to appeal the decision and asking for details of the appeal procedure. Mr Coates suggested Mr Taylor seek his own legal advice about that issue. He reminded Mr Taylor that he had until the close of business that day to file his submissions.

33 I do not consider that, in the circumstances, the Panel's refusal of an adjournment to Mr Taylor was a denial of natural justice. The Institute's officers made it clear to him that he needed to substantiate the reasons why he sought an adjournment by appropriate evidence, including providing medical evidence. The Panel gave Mr Taylor seven days in which to respond in writing, but he chose not to do so. Nor did he seek an extension of time in which to provide written submissions. Although I accept that he suffers from asthma, he was sufficiently well to have commenced new employment.

Mr Taylor's other grounds

34 Mr Taylor argued a number of other grounds. He contended that the Panel members were biased against him, discriminated against him and that the Institute acted as

prosecutor, judge and jury in breach of the ETR Act.[10] But he produced nothing to substantiate the allegation of bias or to demonstrate that there were any grounds for an allegation of apprehended bias. The refusal to grant him an adjournment by itself was not a basis for such an allegation. Nor was there any basis for Mr Taylor's claims of discrimination. In carrying out its investigation and then proceeding to a formal hearing by a Panel, the Institute was not breaching the ETR Act, but performing the functions that Act gave it.

35 Mr Taylor also alleged that officers of the Institute had 'committed perjury and [given] false testimony and fabricated evidence in an attempt to attach a financial loss to this affair'.[11] There was no evidence that the officers had provided false evidence, whether or not the costs of the investigation were to be regarded as a financial loss.

36 Mr Taylor criticised the Panel's reliance on the principle quoted in *Board of Professional Engineers of Queensland v Shirtcliffe*,[12] that fraud unravels everything. He pointed out that he was not found to have committed fraud. But the Panel applied the principle referred to in that case to cases of misrepresentation, which it found Mr Taylor to have made. The Panel stated:

> In this context the Panel found that what must be 'unravelled' is the initial registration of the person known as Julian Richard Taylor on 25 January 2005, 21 January 2008 and 12 January 2012. In respect of each application the registration of Julian Richard Taylor was established by misrepresentation.

37 There was no error in the Panel taking this approach. Misrepresentation, as well as fraud, can lead to the setting aside or 'unravelling' of actions taken in reliance on it.

38 I consider that the Panel was correct in acting under the ETR Act, rather than under the previous legislation, the *Victorian Institute of Teaching Act 2001*. Clause 1.4.1 of Schedule 8 to the ETR Act provides that a teacher who was registered under the 2001 Act immediately before its repeal continued to be registered by the Institute under and subject to the ETR Act.

10 Grounds, Points of Law 12-15 and 17.
11 Grounds, Point of Law 21.
12 [2014] QSC 179; Grounds, Point of Law 4.

39 Mr Taylor argued that that he had never been issued with a decision signed by all Panel members as the copy that was provided to him was signed by the Chairperson by herself and with the prefix 'per' on behalf of the other two Panel members.[13] Thus he argued that his matter before the Panel has 'never been settled' or finalised and the time in which he could commence this proceeding had not commenced to run. He therefore argues that he has never received what he regards as a decision of the Panel and that his time to challenge any decision has not commenced to run.

40 This argument lacks substance because there is no requirement in the ETR Act that the Panel's determination must be signed by all its members. It is sensible for the Chair of the Panel to sign the decision and determination in order to formally identify them, but that is not required by the Act.

41 Mr Taylor contended that the Panel in making its decision compounded its error by failing to take into account relevant material, that is that he was fully qualified and had an excellent teaching record.[14] But this was not the issue that the Panel had to decide. In addition, Mr Taylor was given the opportunity to make written submissions to the Panel, in which he could have described his teaching record, but chose not to do so.

42 Mr Taylor contended that the Panel exceeded its jurisdiction by deregistering him before any charges or convictions had been recorded against him. He relied in support of that proposition on the High Court's decision in *Ziems v The Prothonotary of the Supreme Court of New South Wales*[15] *('*Ziems' Case*')*.[16] He pointed out that the role of the Panel is not to punish a teacher, but to protect the public.

43 The decision in Ziems' Case did not require the VIT to await the outcome of criminal proceedings to conduct its hearing into the allegations made against Mr Taylor. The criminal charges followed the Panel hearing. There was no reason for the Panel to wait to see if criminal charges would be brought against Mr Taylor before

13 Grounds, Points of Law 10-11.
14 Grounds, Point of Law 5.
15 (1957) 97 CLR 279.
16 Grounds, Point of Law 6.

conducting its hearing.

44 Nor did the Panel have to impose, or even consider imposing a suspension of Mr Taylor's registration.[17] It found that he had obtained his registration by misrepresentation. It was certainly open to the Panel to decide that the appropriate outcome of its hearing and determination was to cancel Mr Taylor's registration. It was clearly aware that its role was to protect the public rather than to punish Mr Taylor.

45 In another ground, Mr Taylor contended that an officer of the VIT had spoken to his former wife, relayed information that breached the *Privacy and Data Protection Act 2014* ('PDP Act') and enticed her to give tainted evidence against him.[18] But there was no evidence to support these allegations and there is nothing in the Panel's reasons to suggest that it relied on any such evidence. In any event, there was no prohibition on VIT officers speaking to Mr Taylor's former wife.

46 The VIT argued that Mr Taylor's substantive application was without merit.

Mr Taylor's other arguments

47 Mr Taylor raised many other arguments including in a document containing 55 points of law.[19] Many of them have no bearing on the validity of the Panel's determination and decision to deregister him as a teacher. A number of them concerned the criminal investigation, the validity of the criminal charges laid against him and his criminal trial.[20] Thus Mr Taylor alleged that VIT staff denied him natural justice and procedural fairness by seeking to have him imprisoned. This was said to have occurred by directing the informant to remand him in custody and by withholding evidence during a bail application in the Magistrates' Court. He also argued that the VIT was not a legal entity and relied on the contention that he and the VIT were not parties to a contract. He also raised issues about his contractual arrangements with the schools where he had taught. He stressed that he was seeking to have his

17 Grounds, Points of Law 7-8.
18 Grounds, Point of Law 22.
19 Affidavit of Julian Taylor dated 20 October 2020, Exh JT-08.
20 Grounds, Points of Law 16, 18-20, 23 and Affidavit of Julian Taylor dated 20 October 2020, Exh JT-08, Points of Law 32-55.

deregistration set aside and not seeking to be reregistered.

48 In my opinion none of these contentions establish any jurisdictional error by the Panel. They do not concern the Panel's performance of its statutory duties.

49 For the above reasons, Mr Taylor has not established that any of the points of law upon which he relies give rise to any real prospect that if granted an extension of time he would be successful in the proceeding.

Other matters relevant to the exercise of the discretion to extend time

50 The prejudice to the other party is relevant in determining whether an extension of time should be granted.

51 The VIT submitted that it would be prejudiced given the delay; that extending time may result in the unsettling of other people or established practices; that an extension of time was not justified when considerations of fairness as between Mr Taylor and another person who was otherwise in a like position were taken into account; and that it was not fair or equitable in the circumstances to extend time.[21]

52 The VIT argued that three years and nine months of inaction had passed during which the VIT and its employees involved in the matter were led to believe that it had finally concluded. Mr Taylor's actions had led to reputational harm and loss of confidence in the VIT by the public and the government which were compounded by the wide reporting of the case in the print media. The VIT had also suffered significant loss due to the investigation. Mr Taylor had made many applications to different jurisdictions in an attempt to overturn the Panel's decision and had stated that the matter 'will never end for [him]' and that he would 'pursue every opportunity available to hold [the staff member who undertook the investigation of Mr Taylor] and the VIT to account for their actions.' None of Mr Taylor's 'points of law' established jurisdictional error and many raised questions of fact or assertions of conclusions. The VIT submitted that beyond the issue of the adjournment request, Mr Taylor's application for judicial review would be fruitless, because the

[21] Relying on *Hunter Valley Developments Pty Ltd v Cohen, Minister for Home Affairs and Environment* (1984) 3 FCR 344.

proceedings before the VIT were subsequently overtaken by the criminal convictions.

53 Mr Taylor disputed that the Institute would suffer any relevant prejudice by the grant of an extension of time.

54 In my opinion, the Institute was entitled to have any proceedings that Mr Taylor intended to commence to challenge his deregistration as a teacher brought within a reasonable period of time. The time, in this case, far exceeded a reasonable time.

Conclusion

55 Considering all the relevant matters, I do not consider that the Court should exercise its discretion to extend the time in which Mr Taylor can commence this proceeding. No special circumstances have been established to justify an extension of time.

56 I therefore refuse Mr Taylor's application for an extension of time in which to commence the proceeding. The proceeding must therefore be dismissed.

57 The Institute foreshadowed that if the proceeding was dismissed, it would seek an order that Mr Taylor pay its costs. Such an order would follow the usual rule that costs follow the event. I will give Mr Taylor the opportunity to respond to that application and the Institute the right to reply to any response that he makes.